

MISSOURI SENATE
REPORT OF THE
STATE HEALTH CARE COMMITTEE
ON
NURSING AND BOARDING HOME LICENSING IN MISSOURI

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MISSOURI SENATE

JEFFERSON CITY

December 20, 1978

Senator Norman L. Merrell
President Pro Tem
Missouri Senate

Dear Senator Merrell:

The Senate State Health Care Committee with your direction and assistance has conducted interim hearings on present nursing and boarding home licensing in Missouri. The accompanying report summarizes our findings and recommendations.

The Committee conducted four formal hearings across the state and met informally with numerous citizens, facility administrators, older adults, health professionals and other interested persons. We visited nursing and boarding homes and heard a great variety of witnesses.

The clear conclusion: our present licensing system is ineffective. It permits abuse and neglect of our elderly. It puts more emphasis on physical structure than the dignity of human beings.

Footdragging and legalisms block enforcement of standards. The Department of Social Services must reorganize its aging and licensing services to achieve more effective administration.

Our Medicaid reimbursement system has permitted financial manipulation while failing to reward those who make extra effort.

Nursing and boarding homes should be just one part of a larger system of long term care. We should be encouraging other alternatives such as foster homes, day care and home care services. But an ever increasing older population means we will continue to need good 24-hour care facilities. We must be able to monitor them effectively.

The Governor's Assembly on Nursing Homes has stated specific goals for nursing home improvement. The House Governmental Review Committee has exposed serious deficiencies. Now we are offering the recommendations of your Senate Committee.

Senator Norman L. Merrell
page 2
December 20, 1978

It has been said that a society can be judged by the way it treats its most vulnerable members. We are confident that the General Assembly will work diligently to develop strong legislation so we can assure our many older citizens that they will not be abandoned by their government.

Sincerely,

Harriet Woods

ACKNOWLEDGEMENTS

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Karen Graflage: "I found that dinner was often served to patients sitting in urine soaked clothes and with food from previous meals dripping on their face and clothing..."

Patient: "Well, that morning they had a fire there."

Question: "And was there anyone there when the fire started from the staff of the home?"

Patient: "Not in the building..."

State Inspecting Nurse: "This facility on the four inspections, plus a complaint visit, has not had an attendant at nighttime in that building. This has been brought to the attention of the owners each time...."

Relative: "On January 15, 1978 I went to see him and he was in bed, coughing frequently and so weak he could hardly talk. When I asked how long he had been like that and they told me five days.... I then asked the staff if they could call B---'s doctor. They replied that they couldn't reach him. ...B--- entered --- Hospital on January 16, 1978 suffering from pneumonia, kidney poisoning and dehydration.... B--- died January 23, 1978."

Witness: "And they had had control of her checking account, I know, for twelve months.... A very interesting thing turned up -- for an X-ray (they) charged her \$44. When the statement came from the doctor, the charge had been \$40. Now that is only \$4.00, but I think it is significant."

Witness: "...the first itemized statement we did get was for laundry.... \$29."

Question: "The letter from Mr. Singleton (October 9, 1977) telling them that they had no right to do that unless it was itemized and signed?"

Answer: "Right."

Question: "And they are still doing it?"

Answer: "I have verified and it was done last month."

BACKGROUND

"We need a stronger revocation of licensing law. We do not at this stage find anything in law that really says clearly that we can remove a license from a person."

James Walsh, Director
Department of Social Services

"I do not believe that it will be possible for Missouri to close the bad homes or to deal more effectively with the marginal homes unless we have some different kind of legislation than we have at this time."

Dr. Herbert Domke, Director
Division of Health

The enactment of social security in 1935 may be regarded as the stepping stone for the nursing home industry. It has grown tremendously during the past few decades not only in the number of existing facilities, but also in the numerous programs created to license and establish standards for operation. In general, remarkable progress has been made since the early days when facilities and their patients were kept hidden from public scrutiny.

During the 1960s special attention was focused on nursing home care, primarily due to a rise in the aging population. By 1965, the United States population included more than 17 million people over the age of 65. Congress enacted Medicare and Medicaid in that year. The passage and implementation of these programs which finance nursing home care, has had a tremendous effect on the industry. One obvious result was an increase in the

number of nursing home patients. This in turn focused increased attention on the quality of facilities and the need for stricter regulations regarding care for the elderly. In recent years, interest has grown in intensity on both the national and local levels.

Major legislation regarding nursing home standards in Missouri dates from 1957. In February of that year, a fire at the Katie Jane Memorial Home in Warrenton claimed the lives of 72 elderly patients. This major tragedy stimulated legislative action. The Missouri General Assembly passed the Nursing Home Licensure Law, a new state regulatory code that was praised and duplicated across the United States.

The Nursing Home Licensure Law of 1957 gives the Missouri Division of Health the power to establish regulations and standards pertaining to construction and operation of nursing homes. Three state agencies are involved in the regulatory process for nursing homes: the Division of Health, the Department of Mental Health, and the Division of Family Services. The Division of Health conducts inspections and issues licenses for nursing homes. It also has the responsibility to certify a facility for participation in the Medicare and Medicaid programs. The Department of Mental Health is also required to inspect and license all homes and other facilities that accept mentally retarded persons, except those run by the state. And, finally, the Division of Family Services reviews the appropriateness of care for Medicaid recipients in nursing homes.

Although the Nursing Home Licensure Law was considered an

effective piece of legislation, there have been continued concerns over the quality of nursing home care in Missouri. This is intensified by the high percentage of Missourians over 65, nearly 13% of the population. It is estimated that about 5% of the elderly are in facilities.

Recent concern reflects a disillusionment with results of current operations, inspection and licensing procedures. As required by law, semi-annual inspections of nursing homes are to be carried out in the following four basic areas: patient care, dietary adequacy, sanitation and fire safety. A facility must pass the inspection in each of these four areas in order to meet state standards.

The 1977 inspection summary alarmed state officials and the general public. The report stated that 122 facilities out of a total of 490 had failed to pass their inspections. Even more disturbing, homes that failed to pass the inspection, still had their licenses renewed. Re-inspection of all licensed homes was ordered, resulting in a net total of 87 failures. Ten of these homes showed violations that were not corrected over the period of the past four inspections.

This apparent ineffectiveness of nursing home licensing in Missouri prompted the State Health Care Committee of the Missouri Senate to schedule interim hearings and investigations.

The Committee focused most of its attention on the areas of licensing and regulations, patients' rights and patient care, and alternatives to nursing home care. A House Committee pre-

viously had developed evidence of financial and program failures in several Medicaid certified homes.

During official hearings in Jefferson City, St. Louis, Kansas City and Springfield, private citizens presented voluntary statements describing shocking conditions in specific facilities and expressing frustration at an inability to prompt state actions.

State employees also expressed frustration over weaknesses in the licensing program and asked for legislative changes. Moreover, the Committee received both anonymous and signed complaints against facilities throughout the state. These written complaints subsequently were forwarded to appropriate authorities for further investigation.

These instances of willingness to participate and to provide information were invaluable in giving the Committee and its staff insight into the nursing home dilemma.

PERSONNEL PROBLEMS

"When you have minimum salaried people in addition to minimum education, you have minimum attitudes, minimum motivation and a great deal of absenteeism and tardiness."

Irene Weingerl
Director of Nursing
Jewish Geriatric Convalescent Center

Low quality of patient care frequently is attributed to staffing problems. As there are no state requirements for aides or orderlies, 80-90% of nursing home care may be provided by basically untrained personnel. Such personnel usually are paid no more than the minimum wage and can be hired right off the street.

Some efforts have been made to provide personnel training, particularly in homes where federally-financed programs require such efforts. These range from practical, on-the-spot training to the offering of formal courses by larger homes and industry associations. In the former case, a new employee may simply be required to observe and imitate methods used by an older, "experienced" employee. There are no requirements for the vast majority of homes which are not covered by federal programs.

Another problem confronting administrators is high employee turnover. Employees who are untrained and unprepared for the demanding work often quit. Those who have acquired experience leave for better, higher-paying positions in a hospital or elsewhere. One result is a chronic shortage of help, with insufficient personnel on duty. Several administrators expressed concern about their inability to attract licensed professional personnel because of low pay and difficult conditions.

It should be emphasized that there are many persons employed in nursing homes who have sufficient interest and desire to do their work well. However, as James Walsh, Director of the Department of Social Services, indicated during the Jefferson City hearing - "even in the most horrendous of the institutions that we have been involved with there is interest on the staff, but perhaps the most outstanding problem is that they have not been trained. They're not quite sure what to do."

Recommendation

All nurses' aides and orderlies shall receive training in a program which has received state approval.

INSPECTIONS

"I believe that we have too many disciplines that are doing essentially the same thing without proper concentration on a unified inspection...."

Jesse Bartlett, Director
Bureau of Nursing Home
Licensing and Certification

"We have five teams through the state to do all 192 (Medicaid-certified) nursing homes and that is a big job. We have good teams but we have not been able to train them. We have not had the time... (They) are not properly trained to do this."

Patricia Kingslan, R.N.
Medical Review Unit
Division of Family Services

One of the most controversial aspects of nursing home regulation pertains to inspections. Current legislation requires semi-annual inspections to be conducted by an institutional advisory nurse and by a sanitarian, both employed by the Division of Health. The institutional advisory nurse has the responsibility of inspecting patient care and dietary adequacy, while the sanitarian checks for sanitation and fire safety problems. Although the majority of the inspectors are performing their duties competently, testimony on the Glenwood case in St. Louis indicated some may ignore deficiencies, obvious even to the untrained eye.

Other witnesses complained of inconsistent inspections from one inspector to another, and urged more training for state employees to encourage uniform inspection. Another issue was raised by an institutional advisory nurse who said staff consistently was short-handed and unable to keep up on required visits in the Kansas City Area.

The number of inspections also proved troublesome. According to current legislation, state inspections may be conducted by three agencies. Nursing home administrators contended that such authorization is unnecessary duplication.

Inspections are currently conducted on either an announced or an unannounced basis. One dubious advantage of the announced visit is that a facility might be fairly clean on one or two occasions during the year. Unannounced inspections would appear to be the most effective means of checking on the functioning of a facility.

Recommendations

Elimination of duplication of state inspections by the Division of Health, the Department of Social Services and the Department of Mental Health. Inspections of all facilities should be conducted by a single inspection agency. However, the Department of Mental Health should still determine the appropriateness of resident placement and the development and review of treatment plans. The department should hire adequate numbers of inspectors and provide regular ongoing training. Requirements should be classified by seriousness to encourage consistent enforcement.

LICENSING AND ENFORCEMENT

"The administrative hearing process, in my humble opinion as an attorney, is impotent. It's just impotent."

D. V. Kammerer
General Counsel
Department of Social Services

"The only way we are being able to close these facilities down now is through the dollar-sign. As long as they get paid, they will stay open."

Merlyn McIntosh
Psychiatric Social Worker
Medical Review Unit
Division of Family Services

During the past decade, approximately 103 administrative hearings have been held in the state. Although these hearings ultimately resulted in the revocation of 30 nursing home licenses, the remaining 73 facilities have managed to retain their licenses and have continued to operate with substantial deficiencies.

A nursing home may be cited for an administrative hearing if that home shows substantial violations of the Nursing Home Licensure Law in at least one of the following categories: patient care, dietary services, fire safety and sanitation and patient abuse. Requests for hearings usually are made by nurses and sanitarians, who inspect the facilities for infractions. However, the decision to grant or deny a request for a hearing is made solely by the director of the Bureau of Nursing Home Licensing and Certification. During the Committee's hearings in St. Louis, the current director, Jesse Bartlett, stated that he rejects five out of every six requests for administrative hearings.

It is significant that recurrent requests for administrative hearings on certain problematic facilities have been denied repeatedly.

Even when a decision to revoke has been made after formal administrative hearings, the nursing home may initiate appeals, which can consume several years. Meanwhile the nursing home continues to operate. A case in point was the Jera Su Home in St. Louis. Top division officials indicated they considered it so difficult to revoke a license that they were no longer really pushing revocation efforts until the change in administration under James Walsh.

The results of such a philosophy are twofold. (1) Substandard facilities are permitted to operate with numerous deficiencies over a period of years, producing a roller-coaster effect, i.e., a facility goes up and down in fulfilling the requirements, often repeating the same violations. (2) State agencies fear facing the problem of relocating the patients if a facility is closed. The basic feeling sometimes seems to be that a poor nursing home is better than no home at all.

At the present time there are about 490 licensed nursing homes in Missouri. A recent study conducted by the Department of Social Services (1977) classifies 85% of these homes as adequate and 15% as marginal at best. A comprehensive nursing home inspection ordered by Governor Teasdale in early 1978 confirms these figures. Although most of the problem homes have been chronically deficient for years, their licenses have continued to be renewed on an annual basis. Renewal of a nursing

home license is not contingent on meeting state standards, but simply upon payment of the required fee. Thus, nursing home licenses have been renewed automatically, regardless of whether the home is in compliance or passes the state inspection.

Recommendation

A one-year license with renewal only after compliance with state standards. There would be alternative sanctions in addition to revocation for non-compliance: civil penalties, a probationary license, injunctive relief. Clear time deadlines should be established for the enforcement. In addition there should be stricter requirements for licensing. An application should include full disclosure to assure financial capacity to operate and provide patient care. No person should be granted a license if he has had a license revoked.

RECEIVERSHIP

"The purpose of voluntary receivership is that we need the beds in the State of Missouri....We ultimately have to have a law of involuntary receivership with the option to move to voluntary so we can keep many of these institutions open."

James Walsh

The committee also heard testimony requesting clearer statutory authority for the state to utilize receivership as a means of upgrading existing facilities which are in serious financial difficulty or where life-threatening conditions exist.

During the past year, the Department of Social Services obtained court approval several times to place administrators in homes with such serious problems. In two cases, Victoria Estates and Compton Hills, the facilities were returned to private ownership after the emergency period. In another type of case, Hamilton in St. Louis, the state intervened to protect the lives of patients and find other placements before the facility was closed by the owner. One of the major advantages of receivership is the retention of beds which would be lost by closing - particularly those needed for Medicaid residents. Funds being paid for patient care can be directed to meet urgent resident needs and upgrade the facility. Receivership also can prevent the "transfer trauma", which endangers the aging patient population when abruptly evicted from long term homes,

Recommendation

Legislative authority for receivership should be provided with proper due process and safeguards of the rights of residents and owners.

PATIENT CARE

"...we don't have any teeth in patient care...very rarely we revoke a license on patient care."

Merlyn McIntosh

Nursing home standards traditionally have been established on the basis of a facility's physical conditions. A facility that met state construction requirements and fire safety codes was considered to be a good nursing home. But a good nursing home must also provide good care. Hearing witnesses urged greater emphasis in the licensing program on care and the health and welfare of patients.

One major problem cited several times was the improper placement of patients in facilities that do not have the program and staff to care for them. In some cases the mentally ill and mentally retarded, even children and young adults, have been integrated into nursing home facilities housing the elderly.

Other problems involve medical attention, general care and treatment, dietary services and physical environment. It should be noted that most problems were concentrated in a small percentage of problem homes.

Medical Attention

"I found the medication cart unattended for several weeks, aides setting up medication and dispensing it. I found medicine on the floor."

Carol Toczko
Former Employee
Glenwood Home and Hospital

Many complaints were heard about inadequate health care. All patients do not receive proper medical attention on a regular basis. Some physicians were reported to have examined patients only sporadically. Testimony indicated that, in the worst cases, no house doctors were available at all. A patient might lie seriously ill for days before either a doctor or ambulance was called.

Patients sometimes do not receive their medication, either because the doctor forgets to prescribe it or the aides forget to administer it. Doctors do not always update patient records. Therefore, the current physical condition and needs of a patient are not readily available, risking improper treatment. Untrained aides have been permitted to dispense medicine, even though regulations specifically delegate this responsibility to the nursing personnel or a licensed practical nurse. In addition, medication and medical supplies sometimes are left unattended.

General Care and Treatment

"Patients were left unattended. I saw three of them fall out of wheelchairs."

Carol Toczko

Mistreatment of patients appears to be the predominant complaint regarding care in the poor facilities. Patients are reported to be subjected to both verbal and physical abuse, for such weaknesses as incontinence or clumsiness of aging. Helpless in such instances, the patient is totally at the mercy of the nursing home employees. Complaints may not be reported for fear

of reprisal. One nursing home resident had to be relocated before he would testify at the Committee's hearing in St. Louis.

Patients are sometimes left unattended for long periods of time with serious consequences. Prolonged lying or sitting, without exercise or change, may produce sores or severe muscle contractions. Attempts to turn or walk without assistance may lead to a serious fall. The patient may be either restrained or sedated because of staff shortages.

Inadequate or inattentive staff also means patients receive little assistance in bathing or getting to the bathroom. Hence, those who are incapacitated must not only tolerate uncleanliness, but must also endure the unpleasantness of sitting or lying in their own waste.

Such situations are most prevalent during the night shift or on weekends, when facilities usually are short of help.

Dietary Services

"They just fixed sweetened tea for everybody and it was served to the diabetics and the low calorie diets, too, which was an indication that they were not watching the special diet orders."

Henry Etta Mitten
Nurse Consultant
Department of Health,
Education and Welfare

Although malnutrition is a rare phenomenon, patients do complain about the food served in nursing homes. Complaints range from the quality of the food to the size of the portions. There have been numerous reports of repetitious menus, which

generally feature foods deficient in essential vitamins. Such menus seem to contribute to the poor eating habits of some patients.

Perhaps a more cogent complaint is the nonexistence of therapeutic diets in some nursing homes. A patient who is on a low-salt diet may receive his food just as highly seasoned as everyone else. One possible explanation is that only nursing homes which participate in the Medicaid program are required to employ a dietitian. Thus a patient in a nursing home not subject to federal standards may or may not enjoy this service.

Physical Environment

"We can walk into some particular institutions and immediately be horrified not so much by bugs although they may proliferate,...but by just the vacuum of any type of activity...you see people in effect doing time until they die..."

James Walsh

"There are a lot of things that are inferior and substandard in these existing facilities. However, they comply with the standards that exist."

Richard Ballard
Environmental Sanitarian
Division of Health

The physical environment of a nursing home has a tremendous effect on the well-being of a patient. Patients living in a pleasant atmosphere exhibit a more healthy attitude than those existing in unappealing surroundings. Unfortunately, many nursing homes do not offer very pleasant living conditions.

Residents are often forced to live in unsanitary environments. There may be a proliferation of bugs, not only in the kitchen

and bathrooms, but also in the closets and bureau drawers. Urine-soaked linens, mattresses and clothing may not be changed for weeks, even though the stench is unbearable. Once changed, soiled items may be tossed on the floor and forgotten. Defective plumbing may cause toilets to function improperly, and toilet paper is not always in abundant supply. A shortage of hot water and soap for bathing is also cited.

In addition to being unsanitary, some nursing homes are simply hazardous places in which to live. Loose flooring and beds improperly equipped with safety bars have caused numerous falls resulting in injury to the patient. The Committee has also heard much testimony concerning defective electrical wiring, inoperative sprinkler systems, and poorly designated fire exits. Some homes are not even equipped with call buttons and alarm systems, which are indispensable in alerting residents to a fire or other disaster. The legislative "grandfathering" of older facilities in the state has kept in existence many facilities which sanitarians complain represent health and safety risks.

In addition some homes are totally devoid of any sort of recreational activity. Patients simply sit around the homes, idling their time away, for there is nothing to divert their attention. Although television or checkers may be available, some patients are like prisoners with nothing to look forward to but the next meal.

Recommendation

A required program of patient rights and grievance procedures applying to all nursing homes, not just those under Medicaid and Medicare. Mandatory reporting of suspected abuse and neglect. All professionals and employees should be required to report such suspicions promptly to the Department of Social Services. An analysis should be made by the department of the "grandfathered" facilities and the feasibility of their upgrading.

REIMBURSEMENT

"We have some of our best homes that have very mediocre rates. And we have some very mediocre homes which are getting the top rates."

Merlyn McIntosh

Nursing home costs concern not only patients and facility operators, but the legislature and taxpayers as well. The state provides cash grants for needy residents in facilities and shares the cost of Medicaid reimbursement. Costs have skyrocketed in recent years and nursing homes now receive a substantial percent of state Medicaid funds.

More and more Missourians are qualifying for Medicaid assistance, but many facilities do not participate in the system or will allot only a limited number of beds to Medicaid recipients. A two-priced system has resulted with private patients paying at a higher rate, and sometimes receiving a higher level of care.

Operators blame the reimbursement system, saying it has burdensome requirements and inequitable payments. Federal officials also have criticized Missouri Medicaid operations. Missouri department spokesmen themselves strongly testified for changes, although not agreeing with all the criticisms.

Witnesses before both Senate and House committees indicated that the system has permitted financial manipulation by some operators who diverted funds from patient care, while at the same time failing properly to reward those offering good care. Missouri currently reimburses homes with an interim rate based on "reasonable cost." At the end of the cost period, a "retrospective" settlement is made on the basis of actual costs incurred. These costs could

reflect inefficiencies or, in one or two documented cases, include multilayered management and rental fees. Financial records sometimes were inadequate or unavailable to permit accountability. State access to records has been limited. On the other hand, facilities providing full services sometimes have been forced to borrow money to maintain cash flow because of inadequate state payments. Rates may be set too low if cost figures are late or the state may not appropriate sufficient funds. The result can be deficits which the state is unable to meet. This year the state is paying all homes only 60% of retroactive amounts because of a fund shortage. The state is now considering prospective or flat rate systems.

Recommendations

The state Medicaid system should be reformed to provide greater accountability of tax dollars and better cash flow to reimburse good care. Financial information should be required and access to records maintained to assure patient funds are not misused or diverted for other uses.

BOARDING HOMES

"There are no sanitation standards. In fact, there are no standards whatsoever in the Boardinghouse Licensure Law."

Esther Hill, Director
Bureau of Boardinghouse
Licensure

Although the majority of Missouri's long-term care patients reside in nursing homes, a significant number of elderly citizens are in boarding homes. Throughout the state, there are 403 licensed facilities that can accommodate 6,900-plus residents. In addition, there are a number of unlicensed boarding homes known to be in operation.

Legislation pertaining to boarding homes dates from 1973. According to the Boardinghouse Licensure Law, a boardinghouse for the aged is defined as "a private home, institution, building, residence, hotel or other place...catering to and providing care incidental to old age to three or more persons who are sixty years of age or over, all of whom are able to care for themselves...." Conditions for residency are clearly restricted to those who do not need nursing care. However, the current law establishes no state requirements regarding fire safety, sanitation, housing or zoning. In these areas, a boarding home must only conform to existing local ordinances. An official state surveyor is authorized only to determine whether a resident is capable of caring for himself in that protective environment. If deficiencies are observed, a surveyor can only "suggest" possible changes and at best hope that they are made. Although the majority of licensed boardinghomes are adequate, the Bureau of Boarding Home Licensure estimates that

there are at least 25 inadequate facilities. In these 25, and in the numerous unlicensed facilities, deficiencies range from unsanitary and unsafe conditions to poor care, poor diet and physical abuse. There is little the state can do.

Recommendation

A reclassification of boarding homes as "residential care facilities" giving the state the authority to establish standards and regulations in regard to patient care, diet, fire safety and sanitation. Apply the same enforcement procedures and sanctions as for nursing homes.

